

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.1031 OF 2007

RAJENDERAN M.

APPELLANT(S)

VERSUS

STATE OF KERALA

RESPONDENT(S)

O R D E R

This appeal has been filed against the judgment of Kerala High Court dated 24.11.2005 by which judgment the Kerala High Court reversed the judgment of acquittal recorded by the Sessions Judge. The appellant was accused no. 1 (A1).

According to the prosecution, on 11.12.1997 at about 8:00 o'clock in the morning, the appellant (accused No. 1) along with accused No. 2 (who was acquitted by both Courts below) was working in the paddy field owned by accused No. 2. He entered into a quarrel with the deceased who was working in his father's paddy field which was adjacent to that of the accused's paddy field. The reason for quarrel was due to the cutting of the separating ridge by the deceased and allowing the water to flow into the field of accused No. 2. Thereafter, the appellant and the accused No. 2 trespassed into the paddy field where the deceased was working and on the exhortation given by accused No. 2 to kill the deceased, the appellant assaulted the deceased with a knife, twice on his head and another over his right hand.

The deceased was taken by PW1, PW3 and his father first to Kasaragod Nursing Home and after giving first aid, he was taken to Unity Medical Centre, Mangalore. PW1 reported the incident before the Kasaragod Police Station at

about 07:15 p.m and as per his statement the crime was registered as FIR No. 689/1997, U/s. 307 R/w Section 34 IPC against the appellant and his uncle, accused No. 2 respectively. The deceased was operated for the injuries sustained and was undergoing treatment. While so, he succumbed to injuries on 17.12.1997 at about 8:30 am.

The appellant and another accused (accused No. 2) faced the Trial. Prosecution examined PW1 to PW16 and marked Ext. P1-P22 and identified MO1 and MO2. On the side of defence, DW1 and DW2 were examined as witnesses and Ext. D1 was marked after closure of prosecution evidence. Under Section 313 of the Criminal Procedure Code (Cr. P.C.) statement of the appellant and the co-accused was recorded. Both appellant and the co-accused filed their written statements under Section 233(2) of Cr.P.C setting out their defence. The Trial Court after considering the evidence on record, acquitted both the accused of offences under Section 447 and 302 read with 34 of the Indian Penal Code, 1860(IPC). Against the judgment of acquittal, the State filed an appeal impleading both the accused. The High Court vide judgment and order dated 24.11.2005 although affirmed the acquittal order of accused No. 2 (M. Muthu Nair), as far as the acquittal order of the appellant is concerned, it has been reversed and the appellant has been convicted under section 304 Part II and sentenced for rigorous imprisonment (R.I.) for seven years. Aggrieved by the judgment of the High Court, this appeal has been filed by the appellant.

Learned counsel for the appellant, challenging the judgment, contended that the Trial Court has recorded the judgment of acquittal after considering the entire oral evidence. It is contended that A1 reached at the place of occurrence after the incident. Learned counsel has referred to the defence of accused No. 2 as noticed by the Trial Court. Learned counsel submits that accused No. 2 has categorically stated in his defence statement, which has been noted in para 7 to the following effect:-

"Denying the prosecution evidence accused No. 2 filed a written statement setting forth his defence as follows: On the fateful morning a quarrel ensued between him and the victim at the paddy field when he questioned the high handed act of the victim in cutting open the separating ridge of the paddy field with a pickaxe to provide flow of water into his paddy field. The victim assaulted him and then continued to open the ridge. A scuffle followed and he tried to snatch away the pickaxe from the hands of the victim. Both of them fell down, the victim with the pickaxe striking his head over a rubble piece. He also sustained injuries. Screaming the victim ran away from the spot and then, at that juncture A1 arrived at the spot. Seeing him injured A1 took him to hospital. At the hospital he was admitted, where the police came and recorded his statement. Though none witnessed the quarrel and scuffle on the advice of the policemen who recorded the statement he had mentioned the name of his nephew (A1) as a witness to the occurrence. The incident was not the result of any premeditation but purely by chance, submits this accused, since his nephew (A1) had left Marxist party, a few days before the incident, at the instance of the local leaders of that party, according to his accused, A1 was also falsely implicated in the crime of murder."

Learned counsel further submits that ocular evidence as recorded does not tally with medical evidence and injuries as found on the deceased could not have been inflicted in the

manner as has been stated by prosecution witnesses.

We have considered the submissions of the learned counsel for the appellant and have perused the record. The High Court had reappreciated the entire evidence on record and after relying on the evidence of PW1 and other witnesses found that the medical evidence, recovery of MO1, ocular evidence of PW1 2 and 6 clearly prove beyond doubt that the injuries were caused on the deceased by A1 (nephew of accused No. 2) and reasoning given by the Session's Court in acquitting A1 is perverse. The High Court came to the conclusion that the view taken by the Sessions Judge is not plausible at all nor reasonably possible. The defence statement of accused No. 2, as noted by the Trial Court, has also been considered by the High Court and the High Court disbelieved accused No. 2 and has observed that the said statement was made only with an intent to save his nephew. The medical evidence as well as statement of the doctor has also been thoroughly looked into and examined and the High Court has rightly come to the conclusion that the medical evidence does corroborate with the ocular evidence. Specific conclusion has been recorded that medical evidence of PW11 and PW12 (Doctors) is in tune with the evidence of occurrence and witnesses.

In view of the foregoing, we do not find any error in the judgment of the High Court by which the High Court reversed the acquittal of A1. The High Court was fully justified in convicting A1 under Section 304 Part II. While specifically considering the question as to whether

accused No. 2 needs to be convicted under Section 302, it has been observed by the High Court in paragraph 14 of the judgment as follows:-

"A1 can be imputed with knowledge that the injuries caused by him is likely to cause death. But, it was caused during a struggle. Death was caused after six days. MO1 weapon which is a usual agricultural weapon and struggle must have started because of the opening of the water channel; but, the murder was not premeditated. In the circumstances, considering the principles laid down by the Apex Court in Ravi Kumar Vs. State of Punjab (2005(2) Supreme 402) and Jayappa Dattu Rajage and others Vs. State of Maharashtra (1982(2) SCC 453), we are of opinion that A1 can be convicted for the offence under section 304 part II and sentenced for RI for seven years and not under section 302."

Learned counsel for the appellant lastly contended that looking at the age of A1 at the date of incident, which took place about 20 years ago, and further that the appellant has already served sentence of 21 months, this Court may consider reducing the sentence. He, further, contended that under Section 304 Part II IPC there is no minimum sentence and sentence up to 10 years with fine can be imposed. He contended that the fine could have been imposed on the appellant and sentence be reduced. We have considered the above submission.

The High Court while convicting the appellant under Section 302 Part II has noted that the weapon used was only usual agricultural weapon and the quarrel with the victim and father of the victim started because of the opening of the water channel with regard to adjoining paddy fields of accused and the murder was not premediated.

Taking into consideration the genesis of incident and the young age of the appellant at the time of incident, other relevant circumstances, we are of the view that in the interest of justice the sentence of seven years be reduced to to half, i.e, 3 years and 6 months, with a fine of Rs. 50,000/- (Rupees Fifty Thousand only).

In the result, the conviction of the appellant is affirmed but the sentence is reduced to half, i.e, 3 years and 6 months, with fine of Rs. 50,000/- (Rupees Fifty Thousand only). The appellant shall deposit the fine within two months and serve the remaining sentence. The appellant is on bail. The bail bonds stand cancelled and he shall be taken into custody forthwith to serve the remaining sentence.

The appeal stands disposed of accordingly.

.....J  
[A.K. SIKRI]

.....J  
[ASHOK BHUSHAN]

NEW DELHI,  
MARCH 23, 2017

ITEM NO.319

COURT NO.8

SECTION IIB

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1031/2007

RAJENDRAN

Appellant(s)

VERSUS

STATE OF KERALA

Respondent(s)

Date : 23/03/2017 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s) Mr. A. Raghunath, Adv.

For Respondent(s) Mr. G. Prakash, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The conviction of the appellant is affirmed but the sentence is reduced to half, i.e, 3 years and 6 months, with fine of Rs. 50,000/- (Rupees Fifty Thousand only). The appellant shall deposit the fine within two months and serve the remaining sentence. The appellant is on bail. The bail bonds stand cancelled and he shall be taken into custody forthwith to serve the remaining sentence.

The appeal stands disposed of in terms of the signed order.

(SONALI SAUND)  
SR.P.A

(MALA KUMARI SHARMA)  
COURT MASTER

(signed order is placed on the file)